

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES PETTUS,

Plaintiff,

v.

M.D. LESTER WRIGHT, et al.,

Defendants.

ORDER

04-CV-6203L

By order dated January 21, 2005, the above-captioned matter has been referred to the undersigned for the supervision of pre-trial discovery and the hearing and disposition of all non-dispositive motions, pursuant to 28 U.S.C. §§ 636(b)(A) and (B). (Docket # 14). Currently before the Court is plaintiff's *pro se* motion for "an order compelling defendants to hand-over discovery requested pursuant to Rule 37(B) and 37(B)(c)." (Docket # 43). Plaintiff's motion, however, does not provide any further explanation or description of the discovery sought.

Rule 37 of the Federal Rules of Civil Procedure permits a party to move the court for an order compelling disclosure or discovery if the opposing party fails to provide such discovery upon request. Fed. R. Civ. P. 37(a)(2)(B). The Rule requires that any motion to compel "must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action." Fed. R. Civ. P. 37(a)(2)(B).

In this matter, plaintiff's motion fails to indicate whether plaintiff, before filing this motion, served a request upon opposing counsel in an effort to obtain the discovery materials in question without court action. Accordingly, plaintiff's motion to compel (**Docket # 43**) is

DENIED without prejudice. If there are specific materials plaintiff has requested from defendants that have not been provided, he may re-file his motion to compel pursuant to the requirements of Federal Rule of Civil Procedure 37(a)(2)(B). Such motion must specifically describe the discovery materials requested, as well as defendants' response to his request, if any.

IT IS SO ORDERED.

s/Marian W. Payson

MARIAN W. PAYSON
United States Magistrate Judge

Dated: Rochester, New York
March 10, 2006.